BORG PRODUCE SALES, INC. v. C.P. FRUIT DENVER, INC., AND CALIFORNIA PACIFIC FRUIT CO.
PACA Docket No. R-00-0012.
Decision and Order filed April 6, 2000.

George S. Whitten, Presiding Officer.
Complainant, Pro se.
Respondent, Pro se.
Respondent, Pro se.
Decision and Order issued by William G. Jenson, Judicial Officer.

Preliminary Statement

This is a reparation proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*). A timely complaint was filed in which Complainant seeks an award of reparation in the amount of $17,663.50 in connection with transactions in interstate commerce involving mixed perishable produce.

Copies of the Report of Investigation prepared by the Department were served upon the parties. A copy of the formal complaint was served upon Respondents. Respondent C.P. Fruit Denver, Inc., filed an answer thereto denying liability to Complainant. Respondent California Pacific Fruit Co. defaulted in the filing of an answer.

The amount claimed in the formal complaint does not exceed $30,000.00, and therefore the documentary procedure provided in the Rules of Practice (7 C.F.R. § 47.20) is applicable. Pursuant to this procedure, the verified pleadings of the parties are considered a part of the evidence in the case as is the Department's Report of Investigation. In addition, the parties were given an opportunity to file evidence in the form of sworn statements, however, none of the parties did so. None of the parties filed a brief.

Findings of Fact

1. Complainant, Borg Produce Sales, Inc., is a corporation whose address is 1601 E. Olympic Blvd. #105, Los Angeles, California.

2. Respondent, C. P. Fruit Denver, Inc., is a corporation whose address is 6100 "G" Stapleton Drive South, Denver, Colorado. At the time of the transactions involved herein this Respondent was not licensed under the Act, but was operating subject to license.

3. Respondent, California Pacific Fruit Co., is a corporation whose address is 2001 Main St., San Diego, California. At the time of the transactions involved herein this Respondent was licensed under the Act.

4. Between September 15, 1998, and October 29, 1998, Complainant sold to

Respondents, and shipped to 6100 “G” Stapleton Drive South, Denver, Colorado, twelve truck lots of mixed perishable produce having a total invoice price of $17,663.50. Respondent’s accepted the produce on arrival. Price reductions were negotiated and agreed to by the parties as to two of the invoices. These price reductions totaled $190.50. Respondent C.P. Fruit Denver, Inc., made a payment to Complainant of $391.52. A balance of $17,081.48 remains due to Complainant.

5. The formal complaint was filed on March 15, 1999, which was within nine months after the causes of action herein accrued.

Conclusions

Respondent C.P. Fruit Denver, Inc., admitted in its answer that the correct prices of the produce purchased from Complainant totaled $17,663.50. However, this Respondent alleged that adjustments were made to the amounts due as to two of the twelve invoices and that Complainant’s Raul Martinez agreed to the adjustments. This Respondent asserted that the correct amount due as a result of the adjustments was $17,663.50. Respondent also asserted that a payment was tendered and accepted in the amount of $391.52. Complainant made no reply to these allegations, and we find that they are correct.

Respondent C.P. Fruit Denver, Inc., also alleged as a defense that a letter accompanied the check for $391.52 which proposed a series of 29 payments of $391.52, with a final payment of $6,118.94. Respondent asserts that Complainant’s cashing of the first check amounted to a settlement and agreement to the payment schedule, and that Complainant has no right to bring this action. We do not agree. There is nothing in the letter which offered the settlement arrangement which made the tender of the check dependent on Complainant’s acceptance of the repayment schedule. We conclude that the amount of $17,473.00 remains due and owing.

Respondent California Pacific Fruit Co. did not file an answer to the complaint and is therefore deemed to have admitted its allegations. We conclude that its liability is joint and several with that of Respondent C.P. Fruit Denver, Inc.

Section 5(a) of the Act requires that we award to the person or persons injured by a violation of section 2 of the Act "the full amount of damages sustained in consequence of such violations." Such damages include interest.[1] Since the Secretary is charged with the duty of awarding damages, he also has the duty, where appropriate, to award interest at a reasonable rate as a part of each reparation

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[1] *L & N Railroad Co. v. Sloss Sheffield Steel & Iron Co.*, 269 U.S. 217 (1925); *L & N Railroad Co. v. Ohio Valley Tie Co.*, 242 U.S. 288 (1916).

award.[2] We have determined that a reasonable rate is 10 percent per annum.

Complainant was required to pay a $300.00 handling fee to file its formal complaint. Pursuant to 7 U.S.C. 499e(a), the party found to have violated Section 2 of the Act is liable for any handling fees paid by the injured party.

Order

Within 30 days from the date of this order Respondents shall pay to complainant, as reparation, jointly and severally, $17,081.48, with interest thereon at the rate of 10% per annum from December 1, 1998, until paid, plus the amount of $300.

Copies of this order shall be served upon the parties.

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[2]See *Pearl Grange Fruit Exchange, Inc. v. Mark Bernstein Company, Inc.*, 29 Agric. Dec. 978 (1970); *John W. Scherer v. Manhattan Pickle Co.*, 29 Agric. Dec. 335 (1970); and *W. D. Crockett v. Producers Marketing Association, Inc.*, 22 Agric. Dec. 66 (1963).